



DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-815]

Certain Preserved Mushrooms from the Netherlands: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain preserved mushrooms (preserved mushrooms) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2021, through December 31, 2021.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Alex Cipolla or Benjamin A. Smith, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4956 or (202) 482-2181, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2022, Commerce published in the *Federal Register* its *Preliminary Determination* in the LTFV investigation of preserved mushrooms from the Netherlands, in which it also postponed the final determination until March 20, 2023.¹ Commerce invited interested parties to comment on the *Preliminary Determination*.

¹ See *Certain Preserved Mushrooms from the Netherlands: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 87 FR 66265 (November 3, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from the Netherlands. For a complete description of the scope of this investigation, see Appendix I.

Verification

Commerce conducted verification of the information relied upon in making its final determination in this investigation, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Specifically, Commerce conducted on-site verifications of the third-country sales, U.S. sales, and cost of production responses submitted by Prochamp B.V. (Prochamp).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes from the *Preliminary Determination*

We have made certain changes to the margin calculations for Prochamp since the *Preliminary Determination*. See the Issues and Decision Memorandum for a discussion of these changes.

Adverse Facts Available

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Antidumping Duty Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from the Netherlands," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

As discussed in the *Preliminary Determination*, Commerce assigned an estimated weighted-average dumping margin on the basis of facts available with an adverse inference (AFA) to Okechamp B.V. (Okechamp) pursuant to sections 776(a) and (b) of the Act.³ There is no new information on the record that would cause us to revisit our decision in the *Preliminary Determination*. Accordingly, for this final determination, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Okechamp.

In applying AFA, we are assigning the highest rate alleged in the petition as the estimated weighted-average dumping margin to Okechamp. Because this AFA rate is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

Because we calculated a zero percent margin for Prochamp, the sole mandatory respondent with a calculated an estimated weighted-average dumping margin in this investigation, and Prochamp's margin calculation does not otherwise provide transaction-specific dumping margins for the purposes of comparison, we are unable to corroborate the highest dumping margin alleged in the petition using information from a mandatory respondent in this investigation. Thus, for purposes of corroboration, we examined evidence supporting the calculations of the highest dumping margin alleged in the petition. As is Commerce's practice, during the LTFV investigation pre-initiation analysis, we examined: (1) the information used as the basis for export price and normal value in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided in the petition.⁴ We determine that the highest dumping margin alleged in the petition of 146.59 percent is

³ See *Preliminary Determination*, 87 FR at 66266, and PDM at 6-10.

⁴ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391 (November 6, 1996); *Prestressed Concrete Steel Wire Strand from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Negative Preliminary Determination of Critical Circumstances*, 85 FR 61726 (September 30, 2020), and accompanying PDM at 6-7, unchanged in *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, the Republic of Turkey, and the United Arab Emirates: Final Affirmative Determinations of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances, in Part*, 85 FR 80001 (December 11, 2020).

reliable, where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition as reflected in the Initiation Checklist from the investigation.⁵ In addition, we obtained no other information that would cause us to question the validity of the information supporting the relevance or reliability of the petition rate.

Accordingly, because we corroborated the highest dumping margin alleged in the petition to the extent practicable within the meaning of section 776(c) of the Act, we find the 146.59 percent rate to be both reliable and relevant and, accordingly, that it has probative value.

Therefore, we assigned this rate to Okechamp as AFA.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually examined shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

In this investigation, Commerce did not calculate estimated weighted-average dumping margins for mandatory respondents Prochamp or Okechamp that are not zero, *de minimis*, or based entirely on facts otherwise available. Pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances is to calculate the all-others rate as a simple average of the dumping margin(s) alleged in the petition.⁶

⁵ See *Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 87 FR 24941 (April 27, 2022) (*Initiation Notice*) and accompanying Antidumping Duty Investigation Initiation Checklist, "Certain Preserved Mushrooms from the Netherlands," dated April 20, 2022 (Initiation Checklist).

⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); and *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the POI:

Exporter or Producer	Weighted-Average Dumping Margin (percent)
Okechamp B.V.	146.59
Prochamp B.V.	0.00
All Others	132.97 ⁷

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the *Federal Register*, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of preserved mushrooms from the Netherlands, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2022, the date of publication of the *Preliminary Determination* of this investigation in the *Federal Register*, with the exception of entries of subject merchandise that were produced and exported by Prochamp. Because the estimated weighted-average dumping margin for Prochamp is zero, entries of shipments of subject merchandise produced and exported by Prochamp will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP to not suspend merchandise produced and exported by Prochamp. However, entries of subject merchandise in

⁷ See “All Others Rate” section, *supra*; see also *Initiation Notice*, 87 FR at 24944, and the Initiation Checklist. The margins alleged in the Petition were 120.88, 131.45, and 146.59 percent.

any other producer/exporter combination, *e.g.*, merchandise produced by a third party and exported by Prochamp, or produced by Prochamp and exported by a third party, are subject to the cash deposit requirements at the all-others rate.

Furthermore, other than for entries produced and exported by Prochamp, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) the cash deposit rate for the respondents listed in the table above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin listed in the table above.

These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this investigation is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of preserved mushrooms from the Netherlands no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, other

than those produced and exported by Prochamp, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed in the “Continuation of Suspension of Liquidation” section.

Administrative Protective Order

This notice serves as a final reminder to the parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: March 20, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

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- II. Background
- III. Changes from the *Preliminary Determination*
- IV. Discussion of the Issues
 - Comment 1: Application of Adverse Facts Available to Okechamp
 - Comment 2: Rejection of Okechamp's Untimely Submission of the Auditors' Opinion
 - Comment 3: Decision To Not Verify Okechamp
 - Comment 4: Okechamp's Cost of Production Information
 - Comment 5: Okechamp's Sales Data
 - Comment 6: Application of Adverse Facts Available to Prochamp
 - Comment 7: Prochamp's Financial Reporting
 - Comment 8: Calculation Basis of Prochamp's Cost of Production Costs
 - Comment 9: Prochamp's Third-Country Sales Reporting
 - Comment 10: Prochamp's Reporting of Control Numbers
 - Comment 11: Prochamp's Reporting of Date of Sale
 - Comment 12: Prochamp's Reporting of Certain Separately-Negotiated U.S. Freight Revenues
 - Comment 13: Prochamp's Reporting of U.S. Gross Unit Prices Inclusive of Separately Negotiated Revenues
 - Comment 14: Accuracy of Prochamp's Reporting of Certain U.S. Freight Costs
 - Comment 15: Prochamp's Reporting of Shipment Dates and Credit Expenses
 - Comment 16: Commerce's Selection of the Third Country Market
- V. Recommendation

[FR Doc. 2023-06185 Filed: 3/24/2023 8:45 am; Publication Date: 3/27/2023]